SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 116

JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION AT THE PORT OF SAN FRANCISCO, PETITIONER

vs.

LAM YOUNG, FOR AND ON BEHALF OF PHUONG CON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

For Appellant:

DION R. HOLM, Esq., Humboldt Bank Bldg., San Francisco, California.

For Appellee:

UNITED STATES ATTORNEY, San Francisco, Calif.

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 18,908.

In the Matter of the Application of LAM YOUNG, for Writ of Habeas Corpus for and on Behalf of PHUONG CON.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Sir: Please issue certified copies of the following proceedings, etc.:

1. Petition for writ of habeas corpus.
2. Order to show cause therein.
3. Demurrer.
4. Order sustaining demurrer, denying petition and discharging order to show cause.
5. Notice of appeal.
6. Petition for appeal.
7. Order allowing appeal.

8. Assignment of errors.
9. Stipulation and order as to exhibits.
10. Substitution of attorneys.
11. Praecipe for appeal and all minute orders of Court except those of postponement.
12. Citation on appeal, original and copy.

DION R. HOLM,
Attorney for Appellants. [1*]

[Endorsed]: Receipt of a copy of the within praecipe for transcript of record is hereby admitted this 19 day of March, 1926.

GEO. J. HATFIELD,
S.,
U. S. Atty.

Filed May 19, 1926. [2]

[Title of Court and Cause.]

PETITION FOR WRIT OF HABEAS CORPUS.

I.

Phuong Con is a person of Chinese descent, thirty-one (31) years of age, and arrived at the port of San Francisco on the 18th day of November, 1925, and sought admission to the United States as a resident of Saigon, French Indo-China, and presented to the Commissioner of Immigration at Angel Island a "Section 6" certificate; that the said Section 6 certificate was issued to Phuong Con in accordance with the laws relating to the admis-

*Page number appearing at foot of page of original certified Transcript of Record.

sion of Chinese, Act of May 6, 1882, as amended and added to by the Act of July 5, 1884; that the said certificate issued in accordance with Section 6 of the said Act contained a visa of the American Consul at Saigon, Indo-China, and under his official seal the said American Consul certifies that he has made a thorough investigation of the statements contained in the said certificate and found them to be in all respects true. The said certificate shows on its face that the applicant has permission of the Indo-China Government to come to the United States; that the said certificate is printed in the English language, sets forth the name of Phuong Con which is the tribal name in full of the said Phuong Con; it also shows on its face the age, height and all physical peculiarities of the said Phuong Con, his former and present occupation and how long he had pursued the same as [3] of the date of issuance of the said certificate, which certificate was viseed by the American Consul on the 27th day of November, 1924, and the said certificate further sets forth the place of residence of the said Phuong Con. The said certificate sets forth that Phuong Con is and was a merchant, the nature and character and estimated value of the business carried on by him prior to and at the time of his application for said certificate.

II.

Proceedings were had before the Commissioner of Immigration at Angel Island on the 3d day of December, 1925, and on the 12th day of December, 1925, and on the former date, the board of special

inquiry conducting the hearing at Angel Island provisionally denied Phuong Con the right to enter the United States and on the latter date finally denied the said Phuong Con the right to enter the United States. The decision of the board of special inquiry was adopted by the Commissioner of Immigration at Angel Island on the 7th day of December, 1925, wherein in his findings, the said Commissioner of Immigration stated Phuong Con "has no status entitling him to admission." On the 12th day of December, 1925, the Commissioner of Immigration finally denied in writing the said Phuong Con the right to enter the United States. Thereafter and within the time provided by law, an appeal was perfected to the Secretary of Labor at Washington, D. C., and on the 3d day of February, 1926, the Commissioner of Immigration at Angel Island forwarded to Phuong Con's attorney, a notice that the appeal to the Secretary of Labor has been dismissed.

III.

Phuong Con is unlawfully imprisoned, detained, confined and restrained of his liberty by John D. Nagel, Commissioner of Immigration, who is the person who has the care, custody and control of the body of the said Phuong Con in the Immigration [4] Station of the United States at Angel Island, Bay of San Francisco, Northern District of California, and the said Phuong Con is about to be deported therefrom to China; that the unlawfulness and illegality of the imprisonment, detention, confinement and restraint of liberty of the said Phuong

Con consists in this: that arbitrarily and unfairly the Commissioner of Immigration and the Secretary of Labor denied Phuong Con the right to enter the United States and that the hearings conducted by the said Commissioner of Immigration at Angel Island consisted solely of the testimony of the said Phuong Con, which was in accord with the statements contained in his Section 6 certificate and that the said Commissioner of Immigration nor the Secretary of Labor, nor any other person introduced any evidence to controvert the testimony of the said Phuong Con. The said testimony conclusively shows that Phuong Con was a merchant for many years prior to his obtaining the said Section 6 certificate and that the business conducted by him in Indo-China was extensive; that the action of the Commissioner of Immigration and the Secretary of Labor violated the treaty between the United States and China as ratified between the two countries on the 19th day of July, 1881, in this, that the said Commissioner of Immigration and the Secretary of Labor did not give full or any recognition to the certificate issued under Section 6 of the laws relating to the admission of Chinese and which laws were passed for the purpose of giving full force and effect to the treaties between the two countries.

IV.

That the records of the Immigration Authorities at Angel Island and the proceedings of the Secretary of Labor at Washington, D. C., are not available to Phuong Con or to petitioner; that your affiant believes said records to be in transit from [5]

Washington and when the said records become available, prays leave to amend this petition by attaching hereto copies of the said proceedings.

V.

That Phuong Con is held incommunicado at Angel Island by the said Commissioner of Immigration and is unable to apply in person or sign this petition; that Lam Young is a friend of the said Phuong Con and makes this petition in his behalf; that all of the allegations contained in this petition are on information and belief but petitioner believes that said allegations are true.

WHEREFORE, petitioner prays that a writ of habeas corpus be issued by this Honorable Court directed to and commanding said John D. Nagel, Commissioner of Immigration at the port of San Francisco to have and produce the body of the said Phuong Con before this Honorable Court at the Post Office Building in the city and county of San Francisco, the day and time certain to be fixed by this Court, or to show cause, if any he has, why the writ should not be granted in order that the alleged cause of imprisonment and detention of said Phuong Con may be examined into so that if it be determined the said detention and imprisonment is unlawful and illegal, or that Phuong Con was not given a fair hearing, that the said Phuong Con may be discharged from the custody, detention and imprisonment; that a copy of this petition be served upon the United States Attorney and a copy of the

order prayed for is to be served on the said Commissioner of Immigration.

BRADFORD M. MELVIN,
Attorney for Petitioner. [6]

State of California,
City and County of San Francisco,—ss.

Lam Young, being first duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief and as to those matters he believes it to be true.

LAM YOUNG.

Subscribed and sworn to before me this 5th day of February, 1926.

[Seal] B. B. FUAZZI,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Feb. 5, 1926. [7]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

GOOD CAUSE APPEARING THEREFOR, and upon reading the verified petition on file herein, it is hereby ordered that John D. Nagle, Commissioner of Immigration for the port and District of San Francisco appear before this Court on the 15th day of February, 1926, at the hour of 10 o'clock A. M., of said day, to show cause, if any he has,

why a writ of habeas corpus should not be issued herein as prayed for and that a copy of this order be served upon the said Commissioner and a copy of said petition upon United States Attorney, and

IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration aforesaid, or whomsoever acting under the order of the said Commissioner and Secretary of Labor shall have the custody of Phuong Con and is hereby ordered and directed to retain the said Phuong Con within the custody of said Commissioner of Immigration and within the jurisdiction of this court until further order herein.

Dated: February 5th, 1926.

FRANK H. KERRIGAN,
Judge of the United States District Court.

[Endorsed]: Filed Feb. 5, 1926. [8]

[Title of Court and Cause.]

DEMURRER TO PETITION FOR WRIT OF HABEAS CORPUS.

COMES NOW the respondent, John D. Nagle, Commissioner of Immigration, at the port of San Francisco, in the Southern Division of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts suffi-

cient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the hearing of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

GEO. J. HATFIELD,
United States Attorney,
ROBERT M. FORD,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Feb. 23, 1926. [9]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 23d day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable FRANK H. KERRIGAN, District Judge.

[Title of Cause.]

MINUTES OF COURT—FEBRUARY 23, 1926—ORDER SUBMITTING CAUSE.

This matter came on regularly this day for hear-

ing on order to show cause as to the issuance of a writ of habeas corpus herein. Counsel was present for respective parties. Respondent filed demurrer to petition and also presented Immigration Records as Respondent's Exhibits "A" and "B," and all parties consenting thereto, IT IS ORDERED that said Immigration Records be considered as part of original petition. After argument by the respective attorneys, the Court ordered that said matter be and the same is hereby submitted. After consideration had thereon, further ordered demurrer sustained and writ denied. [10]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, and the Hon. GEORGE J. HATFIELD, United States Attorney for the Northern District of California:

You and each of you will please take notice that Phuong Con, the detained herein, and Lam Young, the petitioner herein, do hereby appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from the order made and entered herein on the 23d day of February, 1926, sustaining the demurrer, discharging the order to show cause, and denying the petition for a writ of habeas corpus filed herein.

Dated: San Francisco, Calif., March 4, 1926.

DION R. HOLM,

Attorney for Petitioner and Detained, Appellants Herein.

[Endorsed]: Receipt of a copy of the within is hereby admitted this 19 day of March, 1926.

GEO. J. HATFIELD,

U. S. Atty.

Filed Mar. 19, 1926. [11]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Phuong Con, the detained, and Lam Young, the petitioner, who are the appellants herein, and allege:

That on the 23d day of February, 1926, the above-entitled court made and entered its order denying the petition for writ of habeas corpus as prayed for and filed herein, sustaining a demurrer thereto and discharging an order to show cause, in which said order certain errors are made to the prejudice of the appellants, all of which will more fully appear from the assignment of errors filed herein.

WHEREFORE these appellants pray that an appeal may be granted in their behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit for the correction of the errors so complained of, and further, that the transcript of the record, proceedings and papers in the above-en-

titled cause, as shown by the praecipe, may be sent and transmitted to the Circuit Court of Appeals for the Ninth Circuit, under the rules of said court, in accordance with the law in such case made and provided, and that all further proceedings in this matter be stayed until the final determination of said appeal.

Dated: San Francisco, Calif., March 4, 1926.

DION R. HOLM,
Attorney for Appellants. [12]

[Endorsed]: Receipt of a copy of the within is hereby admitted this 19 day of March, 1926.

GEO. J. HATFIELD,
S.,
U. S. Atty.

Filed Mar. 19, 1926. [13]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes Phuong Con, the detained herein by Lam Young, the petitioner herein, both of whom are appellants, by their attorney, Dion R. Holm, and file the following Assignment of Errors, upon which they will rely in the prosecution of their appeal in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment made by this Honorable Court on the 23d day of February, 1926.

I.

That the Court erred in denying the petition for writ of habeas corpus.

II.

That the Court erred in sustaining the demurrer to the petition for a writ of habeas corpus and in not ordering and discharging Phuong Con from the custody of John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

III

That the Court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus. [14]

IV.

That the Court erred in not holding that Phuong Con was or is unlawfully imprisoned, detained, confined and restrained of his liberty by John D. Nagle, Commissioner of Immigration at the Port of San Francisco.

V.

That the Court erred in not holding that there was an abuse of discretion on the part of the Commissioner of Immigration and the Secretary of Labor in denying the said Phuong Con the right to enter the United States.

VI.

That the Court erred in not holding that the hearing or hearings accorded the said Phuong Con

by the Commissioner of Immigration and the Secretary of Labor was or were unfair.

VII.

That the Court erred in finding that it was not an unfair proceeding on the part of the Commissioner of Immigration at Angel Island and/or the Secretary of Labor in disregarding the Section 6 certificate issued to said Phuong Con.

VIII.

That the Court erred in holding that the said Phuong Con was not excluded from the United States without due process of law.

IX.

That the Court erred in not holding that the Section 6 certificate presented by the said Phuong Con to the Commission of Immigration at Angel Island complies fully with all of the requirements of Section 6 of the Act of 1882 as amended by the Act of July 5, 1884, 23 Stat. L., 125; that said certificate was issued by the proper authority and was viseed [15] by the appropriate Consular representative of the United States, and as such legally entitled the said Phuong Con the right of entry into the United States.

WHEREFORE, because of the many manifest errors committed by the said Court the appellants pray that the said judgment sustaining the demurrer to the petition for the writ of habeas corpus, discharging the order to show cause, and denying the writ of habeas corpus be reversed and that the

said Phuong Con be restored to his liberty and permitted to enter the United States, and for such further relief as the Court may deem meet and proper.

Dated: San Francisco, California, March 4, 1926.

DION R. HOLM,
Attorney for Appellants.

Receipt of a copy of the within assignment of errors is hereby admitted this 19th day of March, 1926.

GEO. J. HATFIELD,
S.,
U. S. Atty.

[Endorsed]: Filed Mar. 19, 1926. [16]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

On motion of Dion R. Holm, attorney for Lam Young, the petitioner in the above-entitled cause and for Phuong Con, the detained:

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an order and judgment heretofore made and entered herein, sustaining the demurrer to the petition for a writ of habeas corpus, discharging the order to show cause and denying the petition for a writ of habeas corpus be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith trans-

mitted to the United States Circuit Court of Appeals for the Ninth Circuit, in the manner and time prescribed by law, and that meanwhile all further proceedings in this Court and by the Commissioner of Immigration at Angel Island, California, and by the Secretary of Labor at Washington, D. C., be suspended, stayed and superseded until the determination of said appeal.

Dated: San Francisco, March 19, 1926.

FRANK H. KERRIGAN,
Judge of the United States District Court, in and for the Northern District of California. [17]

Receipt of the within is hereby admitted this 19 day of March, 1926.

GEO. J. HATFIELD,
S.,
U. S. Atty.

[Endorsed]: Filed Mar. 19, 1926. [18]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to JOHN D. NAGLE, Commissioner of Immigration, Port of San Francisco, and GEORGE J. HATFIELD, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city

of San Francisco, in the State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Phuong Con and Lam Young are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Southern Division of the Northern District of California, this 19 day of March, 1926.

FRANK H. KERRIGAN,
United States District Judge. [19]

[Endorsed]: Recd. a copy March 19, 1926.
GEO. J. HATFIELD,
T. J. S.,
U. S. Atty.

Filed Mar. 19, 1926. [20]

[Title of Court and Cause.]

SUBSTITUTION OF ATTORNEYS.

I, Bradford M. Melvin, hereby substitute as the attorney of record in the above-entitled proceedings, Dion R. Holm.

BRADFORD M. MELVIN.

I hereby accept the foregoing substitution of attorney.

DION R. HOLM.

Dated: San Francisco, Calif., March 4, 1926.

[Endorsed]: Receipt of a copy of the within is hereby admitted this 19 day of March, 1926.

GEO. J. HATFIELD,
S.,
U. S. Atty.

Filed Mar. 19, 1926. [21]

[Title of Court and Cause.]

STIPULATION AND ORDER DIRECTING TRANSMISSION OF ORIGINAL EXHIBITS TO APPELLATE COURT.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties in the above-entitled cause and their attorneys, that the original record of the Bureau of Immigration which was filed in the above-entitled court as respondent's exhibit, may be transferred in its original form and without being transcribed to the United

States Circuit Court of Appeals for the Ninth Circuit, and the same is and may there be considered part of the record in determining this cause on appeal to the said United States Circuit Court of Appeals for the Ninth Circuit, without objection on the part of either of said respective parties or their attorneys.

Dated: San Francisco, Calif., March 19, 1926.

GEO. J. HATFIELD,
United States District Attorney.
T. J. SHERIDAN,
Assistant United States District Attorney.
DION R. HOLM,
Attorney for Appellants.

IT IS HEREBY ORDERED that the terms of the above stipulation be complied with.

FRANK H. KERRIGAN,
Judge of the U. S. District Court in and for the Northern District of California.

[Endorsed]: Filed Mar. 19, 1926. [22]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 22 pages, numbered from 1 to 22, inclusive, contain a full, true and correct transcript of the records and proceedings, in the Matter of Phuong Con, on Habeas Corpus, No. 18,908, as the same now remain on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Four dollars and five cents ($4.05), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 22d day of March, 1926.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [23]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to JOHN D. NAGLE, Commissioner of Immigration, Port of San Francisco, and GEORGE J. HATFIELD, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Phuong Con and Lam Young are appellants and you are ap-

pellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Southern Division of the Northern District of California, this 19 day of March, 1926.

FRANK H. KERRIGAN,
United States District Judge. [24]

Recd. a copy March 19, 1926.

GEO. J. HATFIELD,
T. J. S.,
U. S. Atty.

[Endorsed]: Filed Mar. 19, 1926. [25]

[Endorsed]: No. 4814. United States Circuit Court of Appeals for the Ninth Circuit. Lam Young, for and on Behalf of Phuong Con, Appellant, vs. John D. Nagle, as Commissioner of Immigration at the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed March 22, 1926.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

23 [Minute entry of argument and submission, May 14, 1926, omitted in printing.]

24 In United States Circuit Court of Appeals, Ninth Circuit

LOI HOA, APPELLANT vs. JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION AT THE port of San Francisco, California, appellee.	No. 4813
LAM YOUNG, FOR AND ON BEHALF OF PHUONG CON, appellant vs. JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION AT THE port of San Francisco, California, appellee.	No. 4814

Order directing filing of opinion and filing and recording of decrees

Filed June 1, 1926

By direction of the Honorable William B. Gilbert, William H. Hunt, and Frank H. Rudkin, circuit judges, before whom the above-entitled causes were heard, ordered that the typewritten opinion this day rendered by this court in the above-entitled causes be forthwith filed by the clerk and that a decree be filed and entered in the minutes of this court in each of said causes in accordance with the opinion filed therein.

25 In United States Circuit Court of Appeals

No. 4813, No. 4814

Opinion

Filed June 1, 1926

Before Gilbert, Hunt, and Rudkin, circuit judges.

GILBERT, Circuit Judge:

26 These two appeals present the question of the right of Chinese merchants, citizens, and subjects of the Republic of China to enter the United States as such merchants under authority of certificates issued in regular form in compliance with section 6 of the act of May 6, 1882 (22 Stats. 58), as amended by the act of July 5, 1884 (23 Stats. 115); but made by a French official of French Indo-China, at Saigon and not by an official or representative of the Republic of China, the applicants having been domiciled merchants

for a number of years in Indo-China. Their right to enter the United States was denied by a board of special inquiry, and on appeal to the Department of Labor the ruling was affirmed on the ground that the applicants were only residents and not naturalized citizens of Indo-China, and that the country to which they owed full and unqualified allegiance at the time of their coming to the United States is the country from which they must obtain their certificates. Section 6 of the act requires that a Chinese merchant on coming to the United States "shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government."

The solution of the question here involved depends upon the construction to be given to the word "subject" as used in the statute. The word may have a variant meaning in treaties or statutory enactments, according to the context and to the purpose intended to
27 be subserved. Thus in Respublica v. Chapman, 1 Dallas 53, 60, it was held that it implies a subjection to some sovereign power and means "one who owes obedience to the laws, and is entitled to partake of the elections into public office." But in The Pizarro, 2 Wheat. 227, 245, it was held that in a certain section of our treaty with Spain the words "subjects," "people," and "inhabitants" were "indiscriminately used as synonymous." The court said: "Indeed, in the language of the law of nations, which is always to be consulted in the interpretation of treaties, a person domiciled in a country and enjoying the protection of its sovereign, is deemed a subject of that country. He owes allegiance to the country while he resides in it; temporary, indeed, if he has not by birth or naturalization contracted a permanent allegiance; but so fixed that as to all other nations he follows the character of that country in war as well as in peace." In Carlisle v. United States, 16 Wall. 147, 154, it was said: "The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until by some open and distinct act he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence."

Appellants contend that the word "subject" as used in the exclusion act means one who is resident in or domiciled in "such other foreign" country, and they find support of that construction in the words "of which at the time." We think the contention must
28 be sustained. The treaties with China and the statutes enacted in pursuance thereof were obviously intended only for the benefit of American citizens and Chinese subjects. To become subjects of Indo-China so as to owe allegiance to the government thereof these appellants would have been required to renounce their allegiance to the country in which they were born and all rights which they

theretofore had as subjects of China. We think it inconceivable that either by the United States or by China the benefits of the treaty here involved were intended to be extended to subjects of other nations.

This reasoning is rejected by the Department of Labor for the reason, it is said, "that Chinese may, if they so desire, become citizens or subjects of other nations by naturalization," and thus obtain certificates under section 6. But it is not to be supposed that in entering into the treaties with the United States the Chinese Government had in mind the protection of Chinese who had transferred their allegiance to other countries and had ceased to be Chinese subjects. This is denied by the very terms of the treaties. In the treaty of November 17, 1880, it was declared that the purpose thereof was to promote commercial relations "between the citizens and subjects of the two powers." And in the treaty of March 17, 1894, it was recited that the purpose was "to protect the citizens or subjects, or each, within the jurisdiction of the other." And it is significant as expressing the understanding of the high contracting parties that in that treaty, which was in force for a period of ten years, it was expressly
29 provided that in order that Chinese merchants and others of the favored class might be admitted to the United States they might produce a certificate from their Government, "or the government where they last resided."

The judgment in each case is reversed and the cause is remanded with instructions to issue the writ of habeas corpus as prayed for.

[File indorsement omitted.]

30 In United States Circuit Court of Appeals

No. 4814

Decree

Filed June 1, 1926

Apeal from the Southern Division of the District Court of the United States for the Northern District of California, Second Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Second Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the judgment of the said district court in this cause be, and hereby is, reversed, and that this cause be, and hereby is, remanded to the said district court with instructions to issue the writ of habeas corpus as prayed for.

[File indorsement omitted.]

31 In United States Circuit Court of Appeals

No. 4813, No. 4814

Order staying mandates

Filed July 29, 1926

Good cause therefor appearing, it is hereby ordered that the issuance of each of the mandates in the above-entitled causes be stayed to and including September 1, 1926.

Dated, San Francisco, July 27, 1926.

WM. H. HUNT,
United States Circuit Judge.

[File indorsement omitted.]

[Clerk's certificate omitted in printing.]

33 Supreme Court of the United States

Order allowing certiorari

Filed November 23, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○